IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.6444 of 2006

Prallhad Narahar Sapre .. .. Petitioner
V/s.
The State of Maharashtra & ors. .. Respondents

Mr.S.M.Railkar for petitioner.
Mrs.M.P.Thakur, AGP for respondents.

CORAM : SMT.RANJANA DESAI &
SMT.ROSHAN DALVI, JJ.
Dated : 17th December 2007

ORAL JUDGMENT : (Per Smt.Ranjana Desai, J.)

1. Petitioner is a resident of village Sasale, Taluka Rajapur, District Ratnagiri. He owns Gat No.1085 admeasuring 72.5 ares plus 26.8 ares situated at village Sasale.

2. It appears that in or about June 2002, a decision was taken by the respondents to construct a public road leading to Rathodwadi. It was, therefore, necessary to acquire a part of the land in possession of the petitioner. On 9th October 2002, office of the Deputy Taluka Inspector of land Records issued a notice to the petitioner that his land would be measured.

On 18th October 2002, the said notice was accepted by the petitioner. A notification under Section 4 of the Land Acquisition Act came to be issued on 28th February 2003 for acquisition of 2.50 ares from the land of the petitioner for the purpose of construction of public road. On 20th June 2003, individual notice under Section 4(1) of the Land Acquisition Act came to be issued. The petitioner filed his objection on 23rd July 2003. On 13th April 2004, notification under Section 6 was issued. It was published in Government Gazette on 29th April 2004. On 1st June 2004, a notice under Section 9 was issued to the petitioner asking him to remain present on 16th June 2004. The said notice was received by the petitioner on 13th June 2004.

3. After receipt of the notice dated 13th June 2004, the petitioner filed Writ Petition No.5089 of 2004 in this court. He challenged the acquisition proceedings, inter alia, on the ground that he had not been given an opportunity of hearing under Section 5(A) of the Land Acquisition Act, 1894. This writ petition was disposed of on 24th August 2004. This court

was of the view that there was non-compliance of the mandatory provision of Section 5(A) of the Land Acquisition Act. This court, therefore, quashed and set aside the notification under section 6 and the notices under section 9 issued by the respondents and directed the respondents to commence proceedings from the stage of hearing under Section 5(A) of the Land Acquisition Act.

4. It is the case of the respondents that thereafter proper procedure is followed and Award was declared on 16th May 2006. On 27th September 2006 i.e. almost about 4 months from the date on which the Award was declared, the petitioner filed the present petition praying that notice under section 9(3) and (4) dated 3rd February 2006, the Award dated 16th May 2006 and the notice dated 12th September 2006 issued under Section 12(2) of the Land Acquisition Act, 1894 be quashed and set aside and the respondents be directed to commence the proceedings afresh from the stage of Section 5(A). On 27th September 2007, Rule was issued

on this petition but the Division Bench refused interim relief. The petitioner carried this order to the Supreme Court by way of a special leave petition. On 27th September 2007, the special leave petition was dismissed as withdrawn reserving liberty with the petitioner to file an application for early hearing before the High Court. The Supreme Court observed that if such application is filed, the same be considered by the High Court keeping in view that in case the road is built through petitioner's land, the writ petition would become infructuous.

5. The petitioner, therefore, filed Civil Application No.3079 of 2007 for fixing a peremptory date of final hearing. This application was filed on 5th December 2007. This application was taken up for hearing before us on 13th December 2007. In deference to the Supreme Court order, we expressed our willingness to go on with the hearing. However, learned counsel for the petitioner was not ready to go on with the hearing on the ground that he did not have the papers. We, therefore, directed office to give photo copies of the petition

to him at the cost of the petitioner. We adjourned this petition to 17th December 2007 and that is how it is placed before us today. Petitioner's counsel has accordingly been supplied with necessary papers.

6. We deem it proper to mention the fact that we had expressed our willingness on 13th December 2007 to go on with the hearing because the Supreme Court had requested us to hear the petition. Besides a statement is made by learned AGP that during the interregnum, construction of road has already begun in the portion of land of the petitioner which is acquired. Learned AGP has made this statement on instructions of Mr.Nandkumar Narayan Jadhav, Special Land Acquisition Officer (1), Ratnagiri, who is present in the court.

7. We have heard learned counsel for the petitioner at great length. He submitted that pursuant to the order of the High Court a notice was given to the petitioner for personal hearing under Section 5(A) of the Land Acquisition Act. After receipt of the notice, he filed objections on 2nd April 2005 and

27th June 2005. He drew our attention to reply sent by the 3rd respondent i.e. the Commissioner, Konkan Division, Konkan, Mumbai, to him rejecting his objections. He submitted that this reply indicates that his objections dated 2nd April 2005 were considered. However, his objections dated 27th July 2005 were not considered.

8. He then took us through the objections dated 27th June 2005 and contended that several important objections were raised by him. He stated that the petitioner has contended in this reply that there was no need for acquisition because there was existing alternative road going towards the main road which was being used by the people. The petitioner has further contended that he is not the sole owner of the land. There are other owners. Notices have not been issued to them. The petitioner has also contended that the land having been granted to the petitioner under the Tenancy Act, it could not have been acquired. The petitioner has further stated in the said letter that lands in front of the petitioner's land and around the petitioner's land are not acquired. Only

the petitioner's land is acquired. Learned counsel contended that all these important points raised by the petitioner were not considered by the 3rd respondent when he rejected the objections. Drawing our attention to certain correspondence learned counsel pointed out that the petitioner had asked for particulars about acquisition of other people's lands, but those particulars were not given to him. He submitted that in the circumstances the entire acquisition proceedings deserve to be set aside and in any case, the proposal of the petitioner of offering alternative land may be considered. He also drew our attention to the letter of the Gram Panchayat, which is annexed to the writ petition. The said letter states that there is an alternative road which goes to the main road and it is being used by the villagers. Learned counsel also drew our attention to a map and pointed out that it is possible for the respondents to construct a road in the alternative land which is offered by him. He submitted that if this court is not with the petitioner as regards his objection to the acquisition, the respondents may be directed

to construct a road on the alternative land which is offered by the petitioner.

9. We have also heard learned AGP. She has drawn our attention to the affidavit in reply filed by Mr.Nandkumar Narayan Jadhav, Special Land Acquisition Officer No.1, Ratnagiri. In the affidavit it is stated that on 6th April 2005 the petitioner remained present at the office of village Panchayat, Sasale where the Section 5-A enquiry was held. He stated that he was objecting to the acquisition of the land on the ground stated in his reply dated 2nd April 2005. He further stated that he did not want to give any further written statement. He refused to sign on any document. He stated that he will submit written objections as per the advice of his Advocate. He refused to sign the panchanama which was then signed by Police Patil, Sasale and one respectable citizen from Sasale. It is further stated in the affidavit that objections of the petitioner were forwarded to Sarpanch, Gram panchayat, Sasale vide letter dated 2nd May 2005. Thereafter Sarpanch submitted his remarks dated 16th

May 2005. Then the objections raised by the petitioner along with the remarks submitted by Sarpanch, Gram panchayat, Sasale and the remarks of the Special Land Acquisition Officer were submitted to the Additional Commissioner, Konkan Division, Mumbai and after perusing the record the Divisional Commissioner, Konkan Division, issued a declaration under Section 6 of the Land Acquisition Act on 26th August 2005, which was published in the Government Gazette on 15th September 2005. The enquiry under Section 9(3)(4) of the Land Acquisition Act was held and necessary notices were issued on 3rd February 2006. By reply dated 22nd February 2006, the petitioner raised his objections. On 16th May 2006, after considering the entire material, Award was made under Section 12(2) of the Land Acquisition Act and notice was issued to the petitioner on 28th September 2006 requesting him to collect the amount of compensation.

10. Having perused the affidavit, we are convinced that the respondents have meticulously followed the required procedure. After the order dated 24th August 2004 passed by

the High Court, the petitioner was given an opportunity of hearing. His grievances were considered. So far as the grievance that his objections dated 27th June 2005 were not considered is concerned, we are not impressed by it. It is pertinent to note that as per the affidavit of Mr.Jadhav, on 6th April 2005 when he remained present at the enquiry held under Section 5-A, he raised objections mentioned in reply dated 2nd April 2005. If the petitioner wanted to raise any more objections, on that day itself he should have raised them. In any case, having read the objections dated 27th June 2005 and objections dated 2nd April 2005, we are of the considered opinion that the petitioner has not raised any material new objections. The petitioner is trying to challenge the entire acquisition proceedings and the Award. In our opinion, it is not possible for us at this point of time to state that there is no need for acquisition.

11. So far as the contention that there is an existing road and that this fact is supported by the letter of the Sarpanch stating that the said road is being used by the villagers is

concerned, we feel that, that fact does not help the petitioner. It may be that there is some road which is being used by the villagers but it is specifically stated in the report of the Gram Panchayat dated 16.5.2005 sent to the Land Acquisition Officer that if the proposed area of acquisition is changed, the road is likely to be submerged in water of the adjacent nala and it will then become difficult for people to use it. In this connection, we may refer to the affidavit of one Mr.Gopal B. Koshti, Tahsildar, Office of the Collector, Ratnagiri, District Ratnagiri wherein he has stated that on scrutiny of the land acquired from Block No.1085 of the main Sasale District road to Rathodwadi, it is realized that the property was rightly acquired for construction of the road. The alternative land offered by the petitioner is adjacent to a stream and many times the stream floods and water rises to 2 to 2 ½ feet. Therefore, if that land is used for construction of road, the road may get flooded with water and that would cause inconvenience to the people moving to and fro.

12. We have no reason to disbelieve the report of the Gram Panchayat and the affidavit filed by the Tahsildar Mr.Koshti. The Award is already declared. In our opinion, an attempt to challenge the Award cannot be allowed to succeed at this distance of time. We find no substance in the petition. The petition is dismissed.

13. Needless to say that the civil application also stands dismissed.

14. There will be no order as to costs.

(SMT.RANJANA DESAI, J.)

(SMT.ROSHAN DALVI, J.)